

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODRIGO VASQUEZ HERNANDEZ,

No. C-11-0119 TEH (PR)

Petitioner,

v.

ORDER OF DISMISSAL

R. GROUNDS, Warden,

Respondent.

_____ /

Petitioner, a state prisoner presently incarcerated at the Correctional Training Facility in Soledad, California, has filed a document captioned "SUCCESSIVE HABEAS CORPUS PETITION FOR REVIEW." Doc. #1. Cursory review of the Petition shows that Petitioner is challenging a criminal judgment from Santa Clara County superior court. See Doc. #1-2 at 2-3.

According to the Court's docket, on June 9, 2008, Petitioner filed a petition challenging the same judgment, and this Court denied relief on August 3, 2009. See Hernandez v. Evans, No. C-08-2892-TEH (PR), Doc. #14. Petitioner appealed, and that appeal is pending before the Ninth Circuit. See id., Doc. ## 25 & 27.

1 During the pendency of Petitioner's appeal of the denial
2 of his petition filed in 2008, he has filed both in this Court and
3 in the Ninth Circuit a second or successive habeas petition. See
4 Hernandez v. Evans, No. C-08-2892-TEH (PR), Doc. #27; Hernandez v.
5 Grounds, No. C-11-0119-TEH (PR), Doc. #1. In an order dated October
6 10, 2010 and filed in this Court on November 10, 2010, the Ninth
7 Circuit denied without prejudice Petitioner's application for
8 authorization to file a second or successive 28 U.S.C. § 2254
9 petition in this Court "because petitioner's appeal of the denial of
10 his first habeas corpus petition is still pending in this court in
11 appeal no. 09-16975." See Hernandez v. Evans, No. C-08-2892-TEH
12 (PR), Doc. #27.

13 For the same reasons articulated by the Ninth Circuit,
14 i.e., because Petitioner's appeal from his initial petition is still
15 pending before that court, the instant Petition for Writ of Habeas
16 Corpus, Hernandez v. Grounds, No. C-11-0119-TEH (PR), Doc. #1, is
17 DISMISSED WITHOUT PREJUDICE.

18 The Clerk is directed to terminate any pending motions as
19 moot and close the file.

20
21 IT IS SO ORDERED.

22
23 DATED 01/21/2011



THELTON E. HENDERSON
United States District Judge